

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Thomas Huynh  
Director  
Philadelphia Air Management Services  
321 University Avenue, 2<sup>nd</sup> Floor  
Philadelphia, PA 19104

OCT 17 2011

Dear Mr. Huynh,

The United States Environmental Protection Agency (EPA) has previously delegated to the Philadelphia Department of Public Health's Air Management Services (AMS) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air Pollutants (NESHAP), as found at 40 CFR Part 63. (67 FR 4181, January 29, 2002.)<sup>1</sup> EPA's approval of that previous delegation included an approval of an AMS mechanism for obtaining automatic delegation of any future NESHAP regulations which AMS adopted unchanged from the Federal requirements. This mechanism is for AMS to submit a letter requesting additional delegations to EPA.

In a letter dated August 5, 2011, AMS requested "delegation by reference" to implement and enforce the following additional NESHAP for area sources as in 40 C.F.R. Part 63:

1. Subpart BBBB - Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities
2. Subpart CCCCC - Gasoline Distribution, Gasoline Dispensing Facilities
3. Subpart EEE - Hazardous Waste Combustors
4. Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating
5. Subpart OOOOOO - Flexible Polyurethane Foam Fabrication and Production
6. Subpart VVV - Publicly Owned Treatment Works (POTW)
7. Subpart WWWW - Hospital Ethylene Oxide Sterilizers
8. Subpart ZZZZ - Iron and Steel Foundries

AMS also requested "automatic delegation" of future amendments that EPA promulgates with respect to these NESHAP.

AMS specified in its request letter that it was seeking delegation of the authority to implement and enforce these additional NESHAP and future amendments that EPA promulgates with respect to these NESHAP under its previously approved mechanism for obtaining delegation of additional NESHAP.

On January 29, 2002, EPA initially delegated to AMS the authority to implement and enforce various NESHAP as found at 40 CFR Part 63. In this action, EPA concluded that AMS had demonstrated, as required, that AMS met the general "up-front" criteria for approval which are set forth at 40 C.F.R. § 63.91(d). According to 40 C.F.R. § 63.91(d)(2), "[o]nce a State has satisfied the § 63.91(d) up-front approval requirements, it only needs to reference the previous

<sup>1</sup> EPA has posted copies of this action at: <http://www.epa.gov/reg3airtd/airregulations/delegate/phdelegation.htm>

demonstration and reaffirm that it still meets the criteria for any subsequent equivalency submittals.”

In its August 5, 2011 request for delegation of additional area source NESHAP, AMS included a full new demonstration that it met the requirements of 40 CFR § 63.91(d). While a full new demonstration was not required, EPA finds that the full new demonstration meets the requirement for a reaffirmation that AMS continues to meet the up-front approval requirements of 40 CFR § 63.91(d).

EPA finds that AMS has met the requirements to be automatically delegated the authority to implement and enforce the eight additional NESHAP for area sources specified in the listing above, as well as any future amendments EPA may promulgate with respect to them. Accordingly, EPA hereby delegates to AMS the authority to implement and enforce these eight additional NESHAP for area sources, as well as any future amendments EPA may make to them. This delegation to AMS is subject to the same terms of approval as set forth in EPA’s initial January 29, 2002 delegation to AMS of the authority to implement and enforce NESHAPs as found at 40 CFR Part 63.

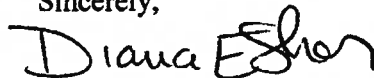
Please note that on December 19, 2008 in *Sierra Club vs. EPA*,<sup>2</sup> the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued the mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed the SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because AMS incorporated 40 CFR Part 63 by reference, AMS should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court’s ruling in *Sierra Club vs. EPA*.

EPA appreciates AMS’s continuing NESHAP implementation and enforcement efforts, and also AMS’s decision to take automatic delegation of eight additional and more recent NESHAP for area sources.

If you have any questions, please contact me or Ms. Kathleen Cox, Associate Director, Office of Permits and Air Toxics, at 215-814-2173.

Sincerely,



Diana Esher, Director  
Air Protection Division

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<sup>2</sup> *Sierra Club v. EPA*, 551 F.3<sup>rd</sup> 1019 (D.C. Cir. 2008)